



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

July 9, 2003

Ms. Myrna S. Reingold  
Galveston County Legal Department  
4127 Shearn Moody Plaza  
123 Rosenberg  
Galveston, Texas 77550-1454

OR2003-4732

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183994.

The Galveston County Juvenile Justice Department (the "department") received a request for "all evidence and any information" related to an incident at a department facility and "policies and procedures" pertaining to a female being left alone with a male staff member, "including the documentation that was sent to Leslie Jacob." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 58.007 and 261.201 of the Family Code. You also claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note at the outset that some of the records you submitted to this office may not be subject to the provisions of the Public Information Act (the "Act"). The Act generally requires the disclosure of information maintained by a "governmental body." However, while the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." *See* Gov't Code § 552.003(1)(A), (B). In determining whether a governmental entity falls within the judiciary exception to the Act, this office looks to whether the governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative, functions. *See* Open Records Decision No. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ)). In Open Records Decision No. 646 (1996), this office determined that specific records regarding

individuals on probation and subject to the direct supervision of a court that are held by a community supervision and corrections department fall within the Act's judiciary exclusion because such records are held on behalf of the judiciary.

Consequently, to the extent the department maintains the submitted information on behalf of the judiciary, the Act is inapplicable to such information, and that information is therefore not subject to public release under the Act. However, any remaining information is subject to the Act. From the information provided this office, we are unable to determine which, if any, of the submitted records are maintained by the department on behalf of the judiciary. We therefore shall address exceptions under the Act for all of the submitted records.

We note also that you did not submit for our review the requested policies and procedures or "the documentation that was sent to Leslie Jacob." Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent that information responsive to this aspect of the request exists, you must release it to the requestor at this time. *See Gov't Code §§ 552.301(a), (e), .302.*<sup>1</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

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<sup>1</sup>The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

You note that pursuant to section 261.405(b) of the Family Code, the department is required to report alleged abuse or neglect in a juvenile justice program to the Texas Juvenile Probation Commission ("TJPC") and a local law enforcement agency for investigation. Additionally, you explain that the documents at issue consist entirely of information used or developed in an investigation under chapter 261 of the Family Code and have been provided to both TJPC and a local law enforcement agency. Based on these representations and our review of the documents, we conclude that the submitted documents are within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the documents are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold these documents from disclosure under section 552.101 of the Government Code as information made confidential by law.<sup>2</sup> Because we are able to make this determination, we do not address your other arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

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<sup>2</sup>We note, however, that the child's parent(s) may have a special right of access to TJPC records relating to this alleged abuse. *See* 37 T.A.C. 349.503(b).

should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen Hattaway  
Assistant Attorney General  
Open Records Division

KEH/sdk

Ref: ID# 183994

Enc: Submitted documents

c: Mr. Arthur Ouzenne  
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(w/o enclosures)